



Attorney Docket: 1860/48111RE

PATENT

5/19/03  
#22

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: GERD BRANDTHORST ET AL.  
Serial No.: 09/368,505 Group Art Unit: 3754  
Filed: AUGUST 5, 1999 Examiner: P. DERAKSHANI  
Title: DEVICE FOR EMPTYING A FILM TUBE (PENTAMIX  
REISSUE)

PETITION UNDER 37 C.F.R. 1.181 TO WITHDRAW OFFICE ACTION

Commissioner for Patents  
Washington, D.C. 20231

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TECHNOLOGY CENTER R3700

Sir:

The Commissioner is hereby respectfully petitioned, pursuant to the provisions of 37 C.F.R. 1.181, to withdraw the Office Action mailed July 5, 2002, and to order the Examiner to write an Examiner's Answer to the Brief on Appeal filed April 10, 2002.

Under 37 C.F.R. 1.191(a), "every Applicant...for reissue of a patent...any of whose claims has been twice or finally (§1.113) rejected, may appeal from the decision of the Examiner to the Board of Patent Appeals and Interferences by filing a Notice of Appeal...."

The first Office Action rejecting the claims in this reissue application was mailed on May 24, 2000. A reply was timely filed.

A second, non-final, action was mailed March 13, 2001. A reply was timely filed.

A third non-final Office Action was mailed November 30, 2001.

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Pursuant to 37 C.F.R. 1.191(a) Applicants filed a reply on February 20, 2002, and, pursuant to 37 C.F.R. 1.191(a) elected to file a Notice of Appeal on March 12, 2002 and the Appeal Brief was timely filed on April 10, 2002.

Now, much to the surprise of counsel for Applicants, the Examiner issued a Final Office Action on July 5, 2002 erroneously stating that the Notice of Appeal and Appeal Brief are improper since the reply filed on April 20, 2002 (actually February 20, 2002) had not yet been examined.

Counsel is not aware of any provision of the statute or the rules that requires an Applicant to wait for an action before filing a Notice of Appeal, in a case where there have been at least two rejections of the claims. In this particular case, there was an assumption, proven correct by subsequent events, that the Examiner would reject the amended claims on the same ground as the previous rejection. This is a Reissue application and the examination of reissue applications is to be expedited. The history of the prosecution of this application has been anything but expeditious. The reply was filed in February, the Notice of Appeal was filed in March, and the Appeal Brief was filed in April. This last action did not issue until July when Applicants had hoped they would have received an Examiner's Answer.

Accordingly, it is respectfully requested that the Commissioner order the action of July 5, 2002 to be withdrawn and order the Examiner to issue an Examiner's Answer so the Appeal can be prosecuted with dispatch.

Alternatively, if the Commissioner denies the petition to withdraw the action, it is respectfully requested that this petition then be considered to be a

response to the action requesting that the Appeal and Appeal Brief be reinstated and ordering the Examiner to issue an Examiner's Answer.

If there are any questions regarding this petition or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #1860/48111RE).

Respectfully submitted,

July 16, 2002



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Herbert I. Cantor  
Registration No. 24, 392

Donald D. Evenson  
Registration No. 26,160

CROWELL & MORING, LLP  
P.O. Box 14300  
Washington, DC 20044-4300  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-8844  
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